

CATHERINE I. RILEY
CHAIRMAN

CLAUDE M. LIGON
SUSANNE BROGAN
J. JOSEPH CURRAN, III
GAIL C. McDONALD



SUSAN S. MILLER
GENERAL COUNSEL

FELECIA L. GREER
EXECUTIVE SECRETARY

GREGORY V. CARMEAN
EXECUTIVE DIRECTOR

PUBLIC SERVICE COMMISSION

April 6, 2001

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Room TW-204B
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL
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APR 9 - 2001
FCC MAIL ROOM

Re: I/M/O Number Resource Optimization, CC Docket No. 99-200
Implementation of the Local Competition Provisions of the
Telecommunications Act of 1995, CC Docket No. 96-68 and
Petition of the Maryland Public Service Commission for
Additional Delegated Authority to Implement Number
Conservation Measures, NSD File Nos. L-00-171 and L-00-169

Dear Secretary Salas:

Enclosed please find an original and seven (7) copies of the Maryland Public Service Commission and the Massachusetts Department of Telecommunications and Energy's Motion for Acceptance of Late Filed Opposition and accompanying Opposition to the Application for Review of Sprint Corporation in the above captioned matter. This motion has also been filed electronically and served on all parties of record.

Please file-stamp one copy and return it to me in the enclosed envelope. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Miles H. Mitchell".
Miles H. Mitchell
Deputy General Counsel

Enclosures

cc: Yog R. Varma, Deputy Chief, Common Carrier Bureau
Network Service Division

WILLIAM DONALD SCHAEFER TOWER • 6 ST. PAUL STREET • BALTIMORE, MARYLAND 21202-6806

410-767-8000

Toll Free: 1-800-492-0474

FAX: 410-333-6495

MDRS: 1-800-735-2258 (TTY/Voice)

Website: www.psc.state.md.us/psc/

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of	*	
	*	
Number Resource Optimization	*	CC Docket No. 99-200
	*	
Implementation of the Local Competition	*	CC Docket No. 96-68
Provisions of the Telecommunications Act	*	
of 1996	*	
	*	
Petitions for Delegated Authority	*	
	*	
	*	
Louisiana	*	NSD File No. L-00-170
Maryland	*	NSD File No. L-00-171
Massachusetts	*	NSD File No. L-00-169
New Jersey	*	NSD File No. L-00-95s
	*	
	*	

MOTION FOR ACCEPTANCE OF LATE FILED OPPOSITION

Pursuant to Section 1.727 of the Federal Communications Commission's ("Commission") Rules of Practice and Procedure (47 CFR 1.727), the Public Service Commission of Maryland (or "the MD PSC") and the Massachusetts Department of Telecommunications and Energy (or "MA DTE") respectfully request that the Commission accept the accompanying late filed Opposition to Sprint Corporation's ("Sprint") Application for Review of Common Carrier Bureau Order DA 01-386, dated February 14, 2001, and as grounds therefor, the MD PSC and MA DTE state as follows:

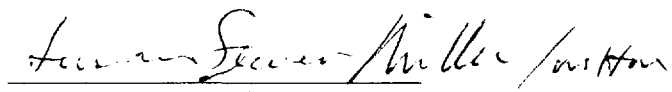
1. On March 30, 2001, the Public Service Commission of Maryland filed a Motion for Extension of Time to file its opposition to Sprint's Application. As grounds therefor, the MD PSC stated that it had not been served with a copy of Sprint's Application and that the press of

other business would prevent the MD PSC from addressing this matter on the April 2, 2001 due date. Thereafter, MD PSC learned that other State commissions, including the MA DTE, also experienced non-service of Sprint's Application. Consequently, the MA DTE, in consultation with the MD PSC, has joined with the MD PSC and subscribes to the positions stated in the accompanying Opposition.

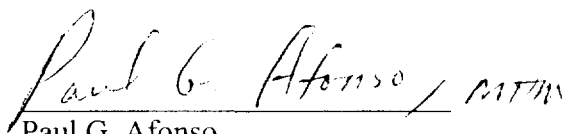
2. Contemporaneous with this filing, the MD PSC and MA DTE have served a copy of their Opposition upon Sprint and other affected parties. As stated in its Motion for Extension of Time, MD PSC has taken steps to avoid or minimize any prejudice to any party to this proceeding.

WHEREFORE, for the foregoing reasons and in the interest of justice, the Maryland Public Service Commission and the Massachusetts Department of Telecommunications and Energy respectfully request the accompanying Opposition be accepted.

Respectfully,



Susan Stevens Miller
General Counsel
Public Service Commission of Maryland
6 St. Paul Street
William Donald Schaefer Tower, 16th Floor
Baltimore, MD 21202
Tel: (410) 767-8039



Paul G. Afonso
General Counsel
Massachusetts Department of
Telecommunications and Energy

CERTIFICATE OF SERVICE

I, Miles H. Mitchell, hereby certify on that on this **6th day of April 2001**, I served a copy of the foregoing Motion for Acceptance of Late Filed Opposition and the accompanying **Opposition of the Maryland Public Service Commission and the Massachusetts Department of Telecommunications and Energy** by U.S. first-class mail indicated below to following person:

ITS
1231 20th Street, N.W.
Washington, D.C. 20036

Carnell Weathers
Network Services Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 6-B153
Washington, D.C. 20554

Thomas J. Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3C-207
Washington, D.C. 20554

James D. Schlichting, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

David Furth, Senior Legal Advisor
Wireless Telecommunications Bureau
445 12th Street, S.W.
Washington, D.C. 20554

Blaise Scinto, Deputy Chief
Policy Division
Wireless Telecommunications Bureau
445 12th Street, S.W.
Washington, D.C. 20554

Dorothy Atwood, Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Yog R. Varma, Deputy Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Peter Tenhula, Legal Advisor
Office of Chairman Powell
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Bryan Tramont, Legal Advisor
Office of Commissioner Furchtgott-Roth
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Mark Schneider, Senior Legal Advisor
Office of Commissioner Ness
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Adam Krinsky, Legal Advisor
Office of Commissioner Tristani
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Grace S. Kurdian, Deputy Attorney General
Eugene P. Provost, Deputy Att. General
Department of Law and Public Safety
Division of Law
124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, NJ 07101

Anthony Centrella, Director
John DeLuca, Assistant Director
Division of Telecommunications
New Jersey Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Robert Melendez
Division of Telecommunications
New Jersey Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Michael F. Atschul
Cellular Tel. & Internet Association
1250 Connecticut Avenue, N.W., Suite 800
Washington, D.C. 20036

Eve Kahao Gonzalez
General Counsel
Louisiana Public Service Commission
P.O. Box 91154
Baton Rouge, LA 70821-9154

Jane E. Mago
Acting General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Jon T. Scott, III
Verizon Wireless
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2595


Brian O'Connor
Bob Calaff
VoiceStream Wireless
401 9th Street, N.W., Suite 550
Washington, D.C. 20004

Robert S. Foosaner
James B. Goldstein
Nextel Communications
2001 Edmund Halley Drive
Reston, VA 20191

Suzanne Toller
AT&T Wireless Services
1150 Connecticut Avenue, N.W., 4th Floor
Washington, D.C. 20036

Carol L. Tacker
Cingular Wireless
5565 Glenridge Connector, Suite 1200
Atlanta, GA 30342

Tim Shevlin
Executive Director
Massachusetts Dept. of Telecom. & Energy
One South Station Boston
Boston, MA 02110


Miles H. Mitchell

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunication)	
Act of 1996)	
)	
Petitions for Delegated Authority)	
)	
Louisiana)	NSD File No. L-00-170
Maryland)	NSD File No. L-00-171
Massachusetts)	NSD File No. L-00-169
New Jersey)	NSD File No. L-00-95s

**OPPOSITION OF
THE MARYLAND PUBLIC SERVICE COMMISSION AND
THE MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS
AND ENERGY TO SPRINT'S APPLICATION FOR REVIEW**

The Maryland Public Service Commission (MD PSC) and the Massachusetts Department of Telecommunications and Energy (MA DTE) offer these comments in opposition to the Application for Review filed by Sprint Corporation (Sprint) on March 16, 2001. Sprint requests that the Federal Communications Commission (FCC) vacate that part of the Common Carrier Bureau (Bureau) Order released February 14 delegating to the four states involved the authority to (1) impose rationing after area code relief has been implemented, and (2) respond to requests for additional numbers outside the rationing process.

Sprint alleges that, in granting such authority to the states to impose rationing following area code relief, the Bureau failed to address substantial legal arguments made by Sprint prior to the issuing of the February 13 Order. Thus, according to Sprint, the Order is rendered arbitrary and capricious.¹ Sprint further asserts that the Bureau, in giving such

¹ CC Docket No. 99-200, 96-98, Sprint Application for Review, pg 2-3.

authority to the states, has acted contrary to its delegated authority.² The MD PSC and the MA DTE contend that Sprint's assertions are without merit. However, the MD PSC and the MA DTE leave Sprint's legal challenges regarding the Bureau's authority to the FCC, confident that such challenges will be competently refuted. Rather, the MD PSC and the MA DTE address the other charges made by Sprint.

The Order Poses No Threat to Competition

Sprint claims that the use of rationing for six months following the implementation of area code relief does not provide what the FCC rules have guaranteed: that carriers will receive additional numbers "when and where needed."³ Instead, claims Sprint, carriers under rationing receive a "lottery ticket" that may enable them to receive the numbers but only at some unspecified time in the future. Such a statement is clearly not true. The rationing process can only proceed for six months following the implementation of area code relief. Thus, once a new area code has been opened, rationing will continue at most for an additional six months.

In the Numbering Resource Order released July 20, 2000, the Bureau granted Indiana, Missouri, North Carolina, Pennsylvania, Utah and Virginia the authority to ration NXX codes after implementation of area code relief. Previously, this authority had been granted to Florida, Massachusetts and Wisconsin.⁴ In its July 2000 Order, the FCC explained why it was granting such authority.

The Commission reasoned that a continuation of rationing after area code relief neither contradicts the Pennsylvania Numbering Order, as requisite area code relief has been implemented, nor has the potential – in contrast to rationing prior to area code relief – to forestall area code relief indefinitely.⁵

² Id.

³ *Numbering Resource Optimization*, Report and Order and further Notice of Proposed Rulemaking, 15 FCC Rcd at 7611 para 88 (rel. March 31, 2000)(*First Report and Order*).

⁴ *Florida Delegation Order*, 14 FCC Rcd at 17517-18; *Massachusetts Delegation Order*, 14 FCC Rcd at 17458-59; *Wisconsin Delegation Order*, 15 FCC Rcd 1310-11.

⁵ CC Docket No. 99-200, 96-98, *Multiple State Delegation Order*, ¶ 62, (Rel. July 20, 2000).

Since the FCC has granted this authority to more than 13 states, the Commissioners must share an underlying belief that such a measure helps in both conserving numbers and making scarce numbering resources available to all carriers in a non-discriminatory manner. The MD PSC and the MA DTE also believe that having such authority will act as a restraint on carriers which might otherwise request numbers simply because they are available. Indeed, while the utilization rates for the two oldest area codes in Maryland are around 60%, the utilization rates for the two newest overlay codes is approximately 16%. Yet relief plans to overlay yet another code in the two original areas have already been made and Maryland will begin pooling numbers in August of 2001.

Having the option of keeping rationing procedures in place for 6 months following implementation of area code relief ensures that only those carriers which really need NXX codes when a new area code is opened will receive them. This situation appears more likely to foster competition than one in which carriers rush to obtain NXX codes which they do not need, making it more difficult for future competitors to obtain codes.

The Order Does Not Permit Discrimination in Number Assignment

Sprint maintains in its Application for Review that where states have implemented both rationing and pooling, numbers cannot be assigned on an equitable basis. Sprint uses California as an example to make its point. In California, carriers which can pool are able to obtain numbers within one week while non-pooling carriers must wait several months to receive the numbers they need. While the MD PSC and MA DTE are sympathetic to the plight of non-pooling carriers, no carrier is forced to endure this situation longer than six months once a new area code has been implemented. In addition, since wireless carriers have pleaded twice before the FCC for an extension of the date by which they must be capable of number portability and thus, of pooling, they are now having to endure the consequences of not being able to pool numbers.

The Order Is Rationally Based and Does Not Constitute a Barrier to Entry

Sprint points out in its Application that fears that there will be “run” on numbers are “groundless”⁶ now that needs-based assignment rules are in place. In the abstract, Sprint’s logic is sound, but the reality is a bit different. NANPA must respond to a request for numbering resources within 10 days. Without some mechanism in place like rationing, it is possible that if many carriers request numbers within a short time, NANPA personnel may be overwhelmed and unable to carry out a thorough investigation. Thus, carriers that do not need numbers may receive them, as they have in the past.

Sprint seems to believe that there is a desire on the part of the States to deny numbers to carriers, regardless of whether they legitimately need them. This is not true. The express concern of the MD PSC and the MA DTE is to make sure that numbers are assigned and used as efficiently as possible so that the life of the North American Numbering Plan (NANP) is extended as long as possible, and ratepayers are spared the high cost of expanding the NANP, which the FCC has estimated would cost between \$50 billion and \$150 billion.

The Delegation of a “Safety Valve” Procedure Does Not Constitute Unlawful Entry Regulation

Finally, Sprint characterizes the authority granted to Maryland, Louisiana and Massachusetts to “respond to requests from individual carriers seeking NXX codes outside the rationing process”⁷ as regulation of entry. This delegated authority makes it possible for a carrier, unable to obtain an NXX code in the rationing process, to appeal to the state. Sprint claims that under this scenario, “states – and states alone – will determine when and under what circumstances a carrier will receive additional numbers so it may continue to

⁶ Sprint Application for Review, p.6.

⁷ Four PUC Delegation Order, ¶ 31

provide its services.”⁸ Although Sprint finds this state of affairs not to its liking, the FCC intended that states should consider carrier requests for scarce numbering resource with greater scrutiny than the NANPA. In the Second Report and Order, released December 29, 2000, the FCC stated:

We continue to believe that we must rely on state commissions to make area code relief decisions because of their unique position to ascertain and weigh the very local and granular information inherent in area code relief decision making.⁹

It is appropriate that carriers find states harder to convince of their need for numbers than NANPA because, in the past, carriers that were not even licensed in a state have been granted numbers by NANPA.¹⁰ Giving states the sole authority to consider numbering requests outside of rationing would appear to be a sound policy decision. The MA DTE has considered several requests pursuant to this authority (including a request from Sprint PCS which was later withdrawn by Sprint PCS) and has responded to the needs of carriers in a timely and efficient manner.¹¹ Such authority is a market-stabilizing act, aimed at ensuring that all eligible carriers have fair access to scarce numbering resources while still protecting the public from the unwarranted expense of expanding the NANP.

Conclusion

Sprint's apparent dissatisfaction with the authority granted to state commissions to ration NXX codes and to rule on requests outside the rationing process seems to arise from the realization that states are examining carrier requests with less leniency than has been shown to carriers in the past. The past practices of both carriers and the NANPA have resulted in a proliferation of area codes which has been inconvenient and costly to

⁸ Id., pg. 6.

⁹ Second NRO, ¶159.

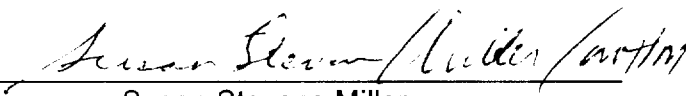
¹⁰ First NRO, ¶194)

¹¹ See MA DTE Letter Order Granting AT&T Wireless' Emergency Petition for One Additional 781-NXX Code, D.T.E. 99-99 (September 29, 2000); MA DTE Letter Order re: Distribution of 781 Priority List Codes, D.T.E. 99-99 (February 14, 2001).

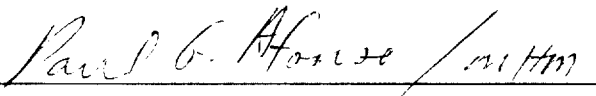
ratepayers. If ten-digit dialing is to be maintained, carriers must adhere to stricter standards and the state commissions are the proper forums in which to administer those standards. For all the foregoing reasons, the Maryland Public Service Commission and the Massachusetts Department of Telecommunications and Energy respectfully request that Sprint's Application for Review be dismissed.

Copies of this Opposition have been served upon all parties of record in accordance with the foregoing certificate of service.

Respectfully submitted,



Susan Stevens Miller
General Counsel
Maryland Public Service Commission



Paul G. Afonso
General Counsel
Massachusetts Department of Telecommunications and Energy